



Memorandum

To : Mr.

Date : October 7, 1987

From : Richard H. Ochsner *ARO*

Subject: Revenue and Taxation Code Section 69.5 (Prop. 60)

You ask whether a taxpayer can qualify for the benefits of Revenue and Taxation Code section 69.5 under the following facts:

- (1) Taxpayer sells his original property in July of 1986;
- (2) Buys his replacement dwelling property in September of 1986;
- (3) Discovers that he does not qualify due to the acquisition of a replacement dwelling prior to November 6, 1986;
- (4) Sells his replacement dwelling to a friend or relative in September 1987;
- (5) Buys back his replacement dwelling (in (4) above) in October of 1987;
- (6) Files a claim for treatment under section 69.5 pursuant to the comparison of the original property sold in July 1986 as compared to the replacement dwelling property purchased in October 1987.

Section 69.5, as added by Chapter 186 of the Statutes of 1987 (AB 60) provides in subdivision (a) that any person over the age of 55 years who resides in property eligible for the homeowners' exemption may transfer the base year value of that property to "any replacement dwelling" of equal or lesser value which is located in the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. Absent any express provision of section 69.5 to the contrary, the term "any replacement dwelling" used in subdivision (a) should be given its ordinary or usual meaning. The term "any" indicates a selection without limitation or restriction. Thus, it would be improper to interpret the language of subdivision (a) to be

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limited to the first replacement dwelling acquired by a claimant either before or after the sale of the original property. Thus, where an individual sells his existing principal residence, he or she may acquire one or more replacement principal dwellings in a series. Based upon the language of subdivision (a), any one of these replacement dwellings could qualify for the benefits of section 69.5 if the other conditions of the section are satisfied. Thus, the fact that the replacement dwelling was acquired after the claimant purchased one or more intervening principal residences would not disqualify it under section 69.5.

It is recognized that the term "replacement" connotes something that is a substitute for, or takes the place of, the existing principal residence. In its most limited sense, the term "replacement" could be interpreted to mean only the first principal residence acquired after disposal of the original principal residence. This narrow interpretation would probably be required had the Legislature referred to "the replacement dwelling" implying that there could be only one replacement. Although contrary arguments might be raised, the use of the word "any" suggests that the Legislature did not intend such a narrow interpretation. We conclude, therefore, that the better view is that the Legislature intended the less restrictive interpretation suggested above in order to extend the benefit to as many qualified individuals as possible.

Although we have concluded that the term "replacement dwelling" need not refer to the first replacement dwelling acquired after disposal of the original property, there remains the question of whether the replacement dwelling described in your example can qualify for the benefit. Subdivision (i) of section 69.5 provides that the section applies to "any replacement dwelling which is purchased or newly constructed on or after November 6, 1986." In your example the replacement dwelling was first acquired prior to that date, sold then reacquired in October of 1987. It would seem that the property could qualify if it was, in fact, "purchased" in October of 1987. The fact that the property was previously owned by the claimant at some prior time should not, in and of itself, disqualify the property. The question is simply whether, as a matter of fact, the sale and repurchase of the replacement dwelling was a bona fide transaction. Although there may have been a transfer of legal title between the parties, if the equitable ownership remained with the claimant or if for some other reason it is clear that the 1987 transaction was merely a sham, then it should not be treated as a "purchase" for purposes of applying the section and we would have to conclude that the replacement dwelling was actually purchased prior to the November 6, 1986, cutoff date.

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Whether or not a particular transaction is a sham will depend upon the facts of each case. It is quite possible that an individual who acquired a replacement dwelling prior to the cutoff date could actually sell it and reacquire it within a short period of time in a bona fide transaction. This might occur, for example, where the individual's job requires that he move back and forth in a short time. Where, however, the individual transfers legal title to the property under circumstances which indicate that the transfer was conditioned upon a promise to resell at the same price, the claimant continues to live in the property during the period of transfer, or other facts show that the parties did not intend a bona fide sale, then the transaction should not be recognized.

The answer to your question, therefore, is that whether or not the taxpayer can receive the benefits of section 69.5 under the facts described will depend upon whether the September 1987 sale of the replacement property to the friend or relative was a bona fide sale which transferred, without restriction, the equitable and legal title to the property beyond the reach of the seller. The facts that the sale is to a friend or relative and that the repurchase occurs within a month of the sale suggests strongly that the transaction was not bona fide. Under these circumstances, the assessor should not grant the benefits of section 69.5 until the claimant provides sufficient facts to satisfy the assessor that this was a bona fide transaction.

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